March 4/1871

James

vs Campbell

Judge Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~204~~ 100

LOUIS F. GÉNÉRÉS, PLAINTIFF IN ERROR,

vs.

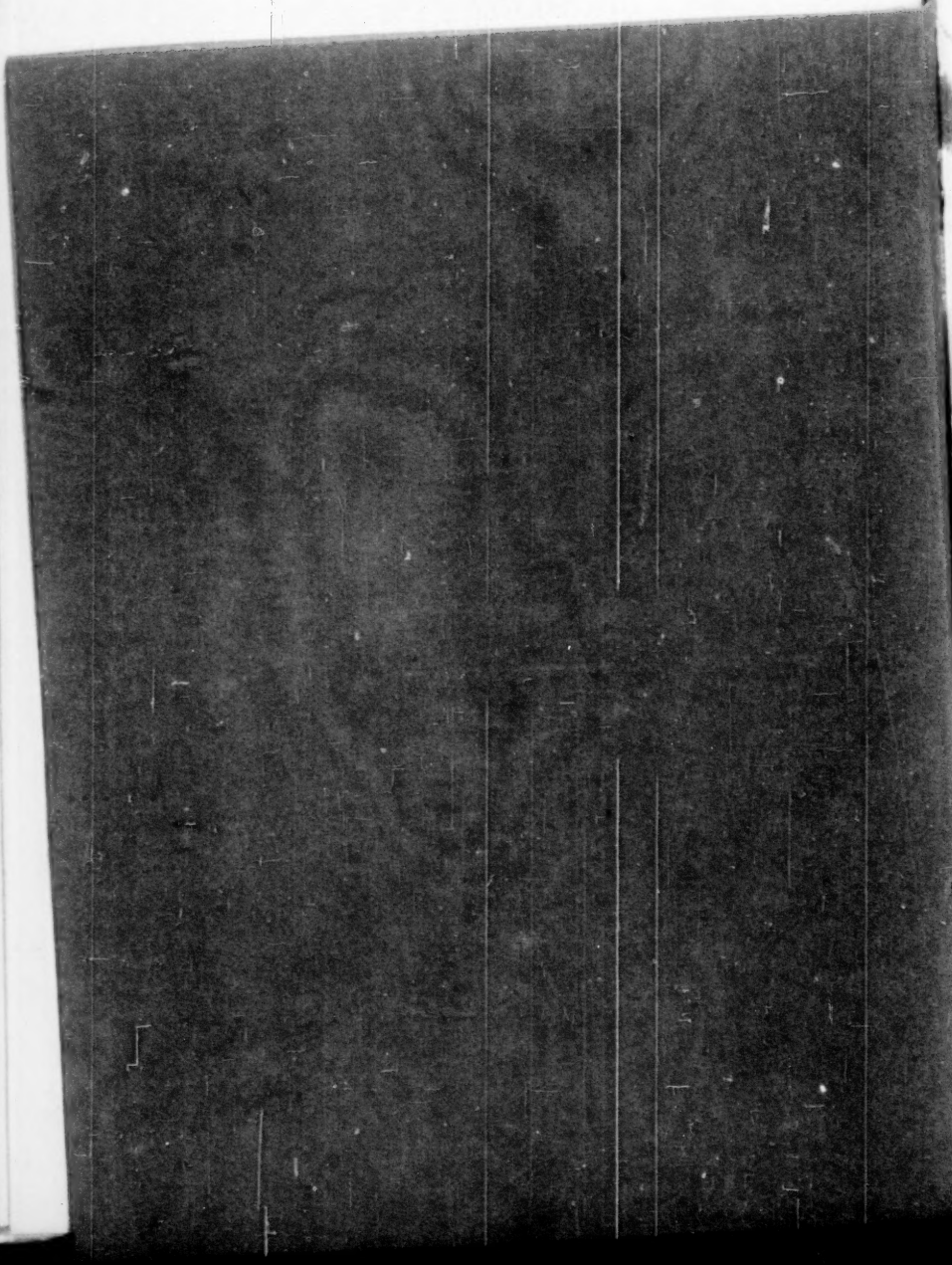
WALTER L. CAMPBELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 27, 1869.

March 1871

Jan Sucks



SUPREME COURT OF THE UNITED STATES.

No. 294.

LOUIS F. GÉNÉRÉS, PLAINTIFF IN ERROR,

vs.

WALTER L. CAMPBELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 *Petition.—Filed November* 18, 1868.

Circuit court of the United States for the fifth circuit and district of Louisiana.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

UNITED STATES OF AMERICA, *District of Louisiana:*

To the honorable the judges of the circuit court of the United States for the district aforesaid:

The petition of Walter L. Campbell, who is a citizen of the State of Mississippi, respectfully shows to your honors that Louis F. Generes, who is a citizen of the State of Louisiana, and resides in New Orleans, is justly indebted to your petitioner as the endorser of a note, J. L. Generes', at New Orleans, dated 4th April, 1861, whereby the
2 said J. L. Generes promised to pay to the said defendant, at the office of Abat, Generes & Company, six thousand three hundred dollars, for value received, with eight per cent. interest from date until paid, two years after date of the said note.

And the said plaintiff avers that when the said note became due and payable, according to the tenor and effect of the same, to wit, the seventh day of April, 1863, there was a civil war existing in Louisiana and other States of the Union, and that all intercourse between New Orleans and the place of the then residence of the plaintiff, to wit, the parish of St. Helena, in Louisiana, was interrupted and prohibited, and that this petitioner was wholly unable to make a presentment and demand of the note at the place of payment by reason of the existing war and of the prohibition and interruption of intercourse thereby created, and that this petitioner could not come from the said parish.

This petitioner further avers that this condition continued
3 until the month of June, 1865, and that immediately after its cessation this petitioner came to the city of New Orleans and demanded payment of the note at the house of the said Abat, Generes & Co., and informed the said defendant of the non-payment of said note, and then and there requested of the said defendant a payment of the same, of all of which the said defendant then and there had due and legal notice.

And the petitioner avers that the said Generes, the defendant aforesaid, well knew, that no funds were left with him, or with his firm of Abat, Generes & Co., for the payment, and that the maker was wholly insolvent, and that the war was raging at the time, and that intercourse was wholly suspended by proclamation and military orders, and that no demand could be made at the maturity of the said note as a consequence of the conditions aforesaid, or until the period aforesaid.

And the petitioner avers that the debt is still due, and is unpaid.
4 He files the note with the petition, and prays that the same may be taken as a part of the same.

He prays a judgment for his debt, interest, and costs, and that citation may issue according to law and the practice of the court, and for general relief according to law and the practice of the court, against said Louis F. Generes as endorser as aforesaid.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Pl'ff.

Note filed with petition.

$6,300. NEW ORLEANS, *April 4th*, 1861.

Two years after date I promise to pay to the order of L. F. Generes, at the office of Abat, Generes & Company, in this city, six thousand three hundred dollars, value received, with 8% interest from date until paid.

(Signed) J. L. GENERES.

Endorsed: (Signed) L. F. GENERES.

Citation.—Issued November 18th, 1868.

5 The President of the United States of America to the marshal of the district of Louisiana, greeting:

WALTER L. CAMPBELL, *vs.* LOUIS F. GENERES. } No. 5688.

You are hereby commanded to summon Louis F. Generes, a citizen of the State of Louisiana, to comply with the demand of Walter L. Campbell, a citizen of the State of Mississippi, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due reture hereof on the first Monday of December, 1868.

6 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 18th day of November, A. D. one thousand eight hundred and sixty-eight, and of the independence of the United States of America the 93d year.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

No. 5688.—U. S. circuit court.—Citation.

WALTER L. CAMPBELL, *vs.* LOUIS F. GENERES. } Marshal's return.

Received, November 20th, 1868, by the U. S. marshal, and on the same day of November, 1868, served copy of within citation, plaintiff's petition accompanying the same, on Louis F. Generes, defendant named herein, personally, at office, 109 Custom-house street, in this city.

New Orleans, November 21st, 1868.

7 (Signed) S. W. REED,
D'y U. S. Marshal.

Exception and answer.—Filed November 30th, 1868.

U. S. circuit court.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

The defendant for exception and answer to the plaintiff's petition says:

1st. That no cause of action is disclosed against him in the said petition.

2d. That he is not liable as endorser on the note sued on, from want of protest and of notice of protest as prescribed by law.

3d. That the note sued upon is extinguished by prescription.

And further answering, he denies all and singular the allegations of the petition, and he prays for all such relief as the circumstances of the case will require, and for costs.

(Signed) CYPRIEN DUFOUR, *Counsel.*

8 *Commission for plaintiff.—Issued December 8th, 1868; returned & filed January 11th, 1869.*

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To any judge, justice of the peace, or commissioner for the State of Louisiana in the State of Mississippi:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call, and cause to come before you, Walter L. Campbell, and him duly examine on the annexed on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Walter L. Campbell is plaintiff and Louis F. Generes is defendant, and the same examinations so taken and reduced to writing you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

9 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this eighth day of December, anno Domini 1868, and the ninety-third year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Interrogatories and depositions annexed to commission, returned and filed January 11th, 1869.

Direct-interrogatories.

Circuit court of the United States, district of Louisiana.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Interrogatories to be propounded to Walter L. Campbell, the plaintiff in this cause, who resides in the State of Mississippi, more than one hundred miles from New Orleans.

1st. Are you the plaintiff in this suit, and where do you reside,
10 and where have you resided since the first of March, 1863?

2d. Did you take from the brother of the defendant the note payable to the defendant, and by him endorsed for six thousand three hundred dollars, which is described in the petition and is filed with the same? Were you the holder of that note at its maturity in 1863? Please state the reason why the same was not presented at its maturity for payment. Where were you in April, 1863? How long had you been there? What was then the place of your residence?

3d. What obstructions or embarrassments existed in April, 1863, to intercourse between the place of your residence and the city of New Orleans? How long did those embarrassments continue to exist? When did they terminate? Answer fully as to your means of intercourse in the years 1863, 1864, 1865.

4th. When did you come to New Orleans in 1865? How were you able to get to New Orleans at that time, and what was your object
11 in coming to the city? What length of time did you remain there?

5th. Did you call upon the defendant at the office of Abat, Generes & Co. at that time? State what conversation you had with him then, and all that took place between you.

6th. Have you had other conversations with him since that time relative to the payment of the note mentioned in the petition? State the conversations and what he said in them.

7th. Where is the maker of the note? Have you had any intercourse or correspondence with him? If you have any letter from him relative to the note, attach the same to your deposition.

8th. What was the pecuniary condition of the maker of the note at the time it was given, and at any time since? Is he solvent or otherwise, and was he so in 1863?

9th. Was the defendant a member of the firm of Abat, Generes & Co., in New Orleans, in 1863, and before that date, and in 1865?

10th. If you know of any fact material to the issues, answer in
12 reference to the same as if you had been directly interrogated.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Plaintiff.

Affidavit waived. Let commission issue to any judge, justice of the peace, or commissioner for Louisiana in the State of Mississippi.

(Signed) C. DUFOUR.

Circuit court of the United States.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Cross-interrogatories.

The defendant objects specially to interrogatories 5th & 6th on the ground that they refer to matters which are foreign to the issue, and are in no manner or form presented in the petition, and make no part of the specifications therein to be found, and, with these express reservations, the defendant now propounds the following cross-interrogatories, viz:

1st. Are you not the plaintiff in this suit?

13 2d. When did you receive the note sued on, and where were you residing at that time?

3d. Since when have you removed to your present place of residence in the State of Mississippi?

4th. When did you come to New Orleans for the first time after the closing of the late war? State the time.

5th. How often have you come back to New Orleans since you first came?

6th. What was your occupation at the time you took the note sued on; and what is your occupation at this present time?

7th. What was the note given for? What was the consideration for it? What was the transaction for which it was issued?

(Signed) CYPRIEN DUFOUR,
Counsel for Def't.

Testimony taken under commission.

STATE OF MISSISSIPPI, *Pike County:*

On this 31st day of December, 1868, in the county aforesaid, personally came before me, Charles H. Lyster, a justice of the peace in
14 and for said county, duly commissioned and qualified, [personally came,] Walter L. Campbell, a resident of said county and known to me, to be examined as a witness in a case pending in the circuit court of the United States for the district of Louisiana, between Walter L. Campbell, plaintiff, and L. F. Generes, defendant, who, being sworn to answer and depose the truth, and the whole truth, to the interrogatories and cross-interrogatories annexed to the commission from the said court, and which commission and interrogatories are returned herewith to the said circuit court at New Orleans, did answer and depose as follows:

Answer 1st. I am the plaintiff in this suit, and during the whole of the year 1863 resided in St. Helena Parish, in the State of Louisiana, and was in that parish.

Answer 2d. The note referred to in this interrogatory, and filed with the petition in this suit, was received by me from the parties
15 thereto about its date, and has not been assigned or transferred. I could not present it for payment at its maturity because of the war then existing. New Orleans was at that time occupied by the forces of the United States, and the country north of Manchac was held by the confederate forces; the approaches to New Orleans on both sides were guarded, and all intercourse prohibited on both sides. It was unsafe for any person to leave St. Helena Parish to go to New Orleans; he was in peril from the military of both parties. Since June, 1861, my residence has been in St. Helena Parish till the war ended.

Answer 3d. The civil war was violent in the spring of 1863, and opposed impediments to intercourse. Engagements between the armies were common along the railroad, at Baton Rouge, Port Hudson, and Vicksburg, and embarrassments and impediments continued until
16 the summer of 1865; I learnt that New Orleans was open, and that restrictions on intercourse removed. I proceeded to the city as soon as practicable, going by land about fifty miles to Pontchitoula, and the remainder by the railroad, which was in a ruinous condition.

Answer 4th. I reached New Orleans about the 12th June. I remained there over a week. I took the amnesty oath there, and gave attention to my business. My business was in part to see the defendant concerning this note. I went to the city as soon as I heard restrictions upon

intercourse and business had been removed, and that I would not be in danger of military interference.

Answer 5th. Shortly after I arrived at New Orleans, I called upon the defendant at the counting-house of Abat, Generes & Co., of which he was a member, to obtain payment of the note, if practicable, or to have some understanding about it. I met him there and requested
17 him to pay it or to make some arrangement of. I stated to him the reasons, before stated, why it had not been presented at its maturity, and that it had not been protested or paid, and that I came to demand payment and to obtain a settlement. The defendant was aware of the failure of the maker to pay it, and that the note was not paid or protested, and that I came to demand payment or obtain a settlement. He answered that it could not be paid; that he had regarded the failure to present it for payment at maturity, or to protest it, as a release to him, but that the debt he had regarded as his own, and to hold on, and that he would see to it. I did not then cause the note to be protested because of this conversation; the maker I have not regarded as able to pay it at any time; my only expectation was from the defendant, and my expectation was that the defendant would do so.

18 *Document marked "A," annexed to foregoing deposition.*

"MARKSVILLE, *January 28th*, 1867.

"W. L. CAMPBELL, Esq., *Tangipaho.*

"DEAR SIR: Your letter of the 12th inst. came to hand a few days ago, requesting to know what progress has been made with the claim you placed in my hands for collection against the estate of Peter Compton, deceased. They would not admit the claim, although I went once to Alexandria to see the attorney of the estate, and another time to see the administrator, who resides some distance below there. I have entered this suit in order to have it recognized as a just claim against the estate. I am informed that the succession is very heavily indebted, and is not solvent. The case will be tried at the next term of the court, and there is no doubt in my mind that judgment in the district court
19 will be in your favor. What the Supreme Court will say is not yet known, but it is generally thought that they will enforce all such indebtedness. As regards the claim you hold against me, it is utterly out of my power to do anything now. When I saw you last winter I was then looking out for hands to commence and work for those that I owed. I succeeded in getting eight, and commenced working on a place I rented on Red River, and after expending a thousand dollars there, I was overflowed, and lost my outlay and my year's time; and it has been with a great struggle and much economy that I have supported my family that year. I have commenced again this year, but not where I can be overflowed, and am working ten hands, all that I could get; and, if Providence will favor me, I hope to do some-
20 thing. As regards prescription, our court has held that the war has interrupted or suspended it. You need not fear as to that; if I am ever able to pay I will do so, and will not plead prescription on you. But I tell you candidly that the war has ruined me, and I owe very largely for the present means of paying. As soon as I can see what this year will bring forth, I will make you a proposition in regard to this debt; but, at the present, I cannot. Were you to know my circumstances you would not urge this upon me now.

"Hoping that you may abide by what I promise, I remain, y'rs, &c.,
(Signed) "J. L. GENERES."

Answer 6th. I have had several conversations with the defendant since that in June, 1865. These conversations were to the effect that he was not ready to pay the note, but was willing to do so. In some of these the fact that he was released by the failure to present was men-
21 tioned, and that it would be an act of voluntary grace to do so. Lately this was more strongly insisted on, and finally disclaimed having any intention to do it, and that he had not promised or held out any expectation that he would do it. I saw him in the year 1865, 1866, 1867, 1868, on the subject.

Answer 7th. I attach the only letter I have from the maker of the note to this answer; his residence is near Marksville on Red river.

Answer 8th. The maker of the note is not able to pay it, and never was able in my opinion. It was taken on the credit of the defendant.

Answer 9th. Defendant was and is a member of the firm of Abat, Generes & Co.

Answer 10th. I know nothing more.

(Signed) WALTER L. CAMPBELL.

Answers to cross-interrogatories.

1st. I am plaintiff in the suit.

22 2d. The defendant delivered to me the note at New Orleans, where I then resided. I removed to St. Helena Parish in June, 1861, and resided there till in 1867.

3d. I removed to Mississippi in September, 1867, and have resided there since.

4th. I reached New Orleans about the 12th of June, 1865, and spent about a week.

5th. I have been in New Orleans every year since for a longer or shorter time.

6th. My occupation, in 1861, was that of farming, and I sold slaves in New Orleans; I am now a farmer.

7th. The consideration of the note was a sale of slaves for which the note was given; the defendant made the purchase for his brother. I understood he bought them to aid his brother.

(Signed) WALTER L. CAMPBELL.

I, Charles H. Lyster, a justice of the peace in and for the county of Pike, in the State of Mississippi, and duly commissioned and
23 qualified as such, do hereby certify that I caused Walter L. Campbell to come before me, and, after duly swearing said witness to speak the truth, the whole truth, nothing but the truth, propounded to him severally the foregoing interrogatories and cross-interrogatories, and reduced his answers thereto in writing in his presence, and then carefully read over the same to him, and he declared the same to be correct, and subscribed the said depositions in my presence, and the foregoing 5 pages contain the correct answers to said interrogatories and cross-interrogatories. And I further certify that I have no interest in this suit.

Given under my hand and seal this 31st day of December, A. D. 1868.

[SEAL.] (Signed) CHARLES H. LYSTER, *J. P.*

Governor of the State of Mississippi to all who shall see these presents, greeting:

24 Be it known that Charles H. Lyster, whose name is subscribed

to the annexed certificate, was, on the day of the date thereof, an acting justice of the peace in and for the county of Pike, in the State of Mississippi; that his attestation to the annexed depositions is in due form of law, and made by the proper officer; and that full faith and credit are due to all his official acts.

In testimony whereof I have caused the great seal of the State to be hereunto affixed.

Given under my hand at the city of Jackson this 6th day of January, A. D. 1869.

(Signed) ADELBERT AMES,
Br't Maj. Gen'l U. S. A., Prov'l Gov'r of Mississippi.

By the governor:
[SEAL.] (Signed) C. A. BROUGHER,
Secretary of State.

Supplemental answer, and order thereon.—Filed December 15th, 1868.

25 United States circuit court.

WALTER L. CAMPBELL
vs.
L. F. GENERES. } No. 5688.

Louis F. Generes respectfully prays for leave to file this his supplemental answer as follows, to wit:

He avers that the note sued upon was given as consideration for the purchase of slaves; and, as slavery is prohibited by the Constitution, no cause of action can possibly arise upon such a contract, because the consideration thereof is reprobated by law; and therefore maintaining and reiterating the pleas contained in his original answer, he respectfully prays that this supplemental answer be filed, and that he be hence dismissed, with costs.

(Signed) C. DUFOUR, *Counsel.*

Let this supplemental answer be filed.
December 15th, 1868.
(Signed) E. H. DURELL, *Judge.*

This reference approved.

Marshal's return.

26 U. S. circuit court.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Received, December 15th, 1868, by the U. S. marshal, and on same day of December, 1868, served copy of within supplemental answer on Campbell, Spofford & Campbell, attorneys named herein, in hands of J. A. Campbell, a member of said firm, personally, at the clerk's office U. S. circuit court, in this city.

New Orleans, December 16th, 1868.
(Signed) S. W. REED,
Dy U. S. Marshal.

Motion and order to take testimony.

Extract from the minutes, November term, 1868.

NEW ORLEANS, *Wednesday, January 27th*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dis't judge.

WALTER L. CAMPBELL
vs.
27 L. F. GENERES. } No. 5688.

On motion of C. Dufour, of counsel for defendant, it is ordered by the court that said defendant be allowed to take the testimony of his witnesses before D. Urban, U. S. commissioner, at such time as may be designated by said commissioner, which said testimony is to be used on the trial of this cause.

Notice to take testimony.—Issued January 27th, 1869.

United States circuit court, district of Louisiana.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

To Campbell, Spofford & Campbell, esq's:

You are hereby notified that testimony will be taken in the above-entitled cause on Saturday, the 30th day of January, 1869, at the clerk's office of this court, before D. Urban, U. S. commissioner, at 1 o'clock p. m., on behalf of defendant.

28 New Orleans, January 27th, 1869.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

U. S. circuit court.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Notice to take testimony.

Received, January 27th, 1869, by the U. S. marshal, and served January 27th, 1869, on J. A. Campbell, member of firm of Campbell, Spofford & Campbell, at office, 27 Commercial Place.

New Orleans, January 27th, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Testimony for defendant.—Filed January 30th, 1869.

U. S. circuit court.

WALTER L. CAMPBELL
vs.
L. F. GENERES. } No. 5688.

Testimony in above-entitled cause, and on behalf of defendant,
29 taken before D. Urban, U. S. commissioner, as per order on file.

Present, C. Dufour, of counsel for defendant; present, J. A. Campbell, of Campbell, Spofford & Campbell, of counsel for plaintiff.

Louis F. Generes, being duly sworn, says:

I am the defendant in this case. I am acquainted with Walter L. Campbell, the plaintiff. When the note was made in April, 1861, Mr. Campbell was domiciled in New Orleans; this note, the whole of it, was given to Mr. Campbell, for a purchase of slaves by my brother from him; Mr. Campbell at that time was "a slave dealer in New Orleans;" "he was a regular slave dealer, and had his depot on Baronne street, in New Orleans, and was engaged in that business for several years;" he left New Orleans about the month of October, 1861; he removed his slaves to a place of his on the Jackson railroad, not far from
30 this city.

Question. I see that this note is payable at the office of Abat Generes & Co., in New Orleans; please state if it was presented at maturity at said office.

Answer. It was not.

Question. When did you see Mr. Campbell for the first time after the maturity of the note, and what did then take place?

Answer. It was in the spring of 1865; I met Mr. Campbell on Royal street, and he asked me if I would pay that note of my brother's. I told him that I did not consider myself bound for that note, inasmuch as he did not ever have any protest of the same; that if the note had been presented to me at maturity to avoid a protest, which I never had yet, that I would have paid it; that things had altered much since then, and I did not feel disposed to pay it; I told Mr. Campbell that I thought
31 my brother would be able to pay his debts, and that I would do all I could to assist him to get a settlement.

Question. This you say took place in the street; did Mr. Campbell expressly call at your office about this note, and how long after?

Answer. Some time afterwards, I do not recollect how long, Mr. Campbell called at my office to ask me whether I had heard from my brother, and done anything for him. I told him I had not; that my brother had again lost his crop by overflow, and could do nothing for him at that time. Then I did not see Mr. Campbell again, as far as I can recollect, until just previous to the institution of this suit, when he told me that if I did not pay him he would sue me.

Question. Mr. Campbell says in his testimony that although
32 the note was not protested, that you had regarded the debt as your own; and to hold on and that you would see to it; what have you to say about this matter?

Answer. I deny most positively of ever having made such a promise to Mr. Campbell.

Question. Did you in any manner say anything calculated to induce Mr. Campbell not to protest the note by binding yourself personally? If any such conversation took place, please state it.

Answer. I never saw Mr. Campbell between the time he left the city in 1861 until after he returned in 1865, and had no conversation with him in that time, nor afterwards, by which he could be led to suppose that I felt myself bound on that note.

(Counsel for plaintiff excepts to so much of the testimony as
33 refers to Mr. Campbell's occupation.)

Cross-examined.

I was a member of the firm of Abat, Generes & Co.; L. F. Generes is the present firm. The office of the firm was on Royal street, and afterwards Abat & Generes were on Custom-house street. As far as I can recollect, the conversation with Mr. Campbell took place on Royal street, near the old Bank of Louisiana. In 1864 and 1865 the number of the counting-house of the firm was 54 and 57 Royal street; the firm of Abat, Generes was dissolved in 1864. The conversation with Mr. Campbell occurred in spring of 1865, a short time after the surrender of the confederacy. My brother did not at any time deposit any money with me for the payment of that note. My brother made the negotiation for the purchase of the slaves; I never saw the slaves. My brother was liv-
34 ing in the parish of Avoyelles since the maturity of the note, and did not return to this city until after the surrender. I endorsed the note for his accomodation; I endorsed it for the purpose of aiding my brother, whose circumstances were always good. I had never seen or heard of the note, when Mr. Campbell spoke to me, since it was made, nor had I any communication with my brother upon the subject of the note. After the conversation referred to had taken place, I had not, as far as I recollect, written to my brother in regard to it. I saw him in regard to it, on his arrival in this city, as I had promised Mr. Campbell that I would do.

Re-direct.

The firm of Abat, Generes & Co., and their successors, and their respective houses, were open and doing business during the whole period of the war.

(Signed) L. F. GENERES.

35 Sworn to and subscribed before me this 30th January, 1869.

[SEAL.] (Signed) D. URBAN,
U. S. Comm'r.

Order.—Cause continued.

Extract from the minutes of Friday, February 26, 1869.

WALTER L. CAMPBELL
vs.
L. F. GENERES. } No. 5688.

This cause was called and ordered to be continued indefinitely.

Testimony for plaintiff.—Filed March 29, 1869.

U. S. circuit court.

WALTER L. CAMPBELL
vs.
L. F. GENERES. } No. 5688.

Testimony in above cause and on behalf of plaintiff taken before D. Urban, U. S. commissioner.

36 Present, D. G. Campbell, of Campbell, Spofford & Campbell, of counsel for plaintiff; present, C. Dufour, of counsel for defendant.

T. A. Bartlette, being sworn, says:

I know the defendant, but not the plaintiff in this suit. I do not know where Mr. Generes was in 1865, as I do not remember of seeing him. I resided at Amite City, and Chrystal Springs, Mississippi, in 1865, until November, 1865. I was sick in May and June, 1865, and know nothing of the condition of the country in that neighborhood; I recovered in August, 1865. The railroad was running from Osyka in August, 1865. The last of April, 1865, I was down as low as Hammond Station; the road then had not been repaired, nor the bridge across Pontchatoula.

From the 1st of May, 1865, I knew nothing of the intercourse be-
37 tween this city and that place, being sick at the time. I was sick in June, 1865.

Cross-examined.

Mr. Gayarrè lived between Tangipaho and Osyka. Amite City is fifteen miles this side, I think, from the residence of Mr. Gayarré. The distance from Osyka to Baton Rouge is about 60 miles. There was a great deal of intercourse between those points on the railroad and Baton Rouge by what is called running the blockade; also passes were given by the military commanders on both sides. I was absent from the city, within the confederate lines, during the war. In 1862 I came to the city once or twice; on two occasions I had passes from the other side, the confederates, and once came without a pass, when I was arrested by the federals at the west end of Lake Pontchartrain, brought to the
38 city and kept in prison awhile; was refused a pass to go back and run the blockade. I came twice when General Butler first came here without being arrested; had no difficulty; and on one occasion I got a pass from a federal officer to go by the pickets. There was a great deal of difficulty in getting passes, even if the oath of allegiance was taken; but when having a pass there was no difficulty in going through.

(Signed) T. A. BARTLETTE.

Sworn to and subscribed before me this 29th March, 1869.

(Signed) D. URBAN,
U. S. Commissioner.

G. W. H. Marr, being sworn, says:

I don't think I know the parties to this suit; only know them by reputation. I resided at Pontchatoula from August, 1862, till November,

1865, when I returned to New Orleans. The federal lines were established at Pass Manchac, I think, during the month of May, 1862,
39 when the bridge was burnt, and I believe they never occupied any position north of that until May, 1865, when they established a military post at Pontchatoula. In May and June, 1865, I did not consider any person unsafe in that region of the country. The country was full of persons who had been out in the confederate lines and army, returning to the city, but I heard of no acts of lawlessness. I believe it was in the latter part of May, 1865, that the railroad communication was extended to Pontchatoula, and from that time continued; up to July, 1865, horse cars ran from Pontchatoula to Amite City. Up to the time of the communication a pass was required; after that not. The oath of allegiance was required on coming in here up to the opening of communication; after that I don't believe it was required.

Cross-examined.

40 The place I had at Ponchatoula was intended as a summer residence, but became a permanent residence during the war; up to the time of my going out there I was resident in New Orleans. In April, 1862, I went there to superintend the building of my house, and on hearing of the fall of New Orleans I remained there. I heard of Mr. Campbell while I was in New Orleans; never heard of him at any place else. He resided here and was considered a citizen of the place. I knew that persons did come in and out by way of Baton Rouge and plantations on the coast, from and to stations on the Jackson railroad. Mr. Perkins came by way of Pass Manchac when he fled from New Orleans. Persons came in and out by that way during the war; I mean by the way of Baton Rouge and plantations.

(Signed) G. W. H. MARR.

41 Sworn to and subscribed before me this 29th March, 1869.

(Signed) D. URBAN,
U. S. Commissioner.

Document filed March 29th, 1869, for plaintiff.

[Copy.]

HEADQUARTERS MILITARY DIVISION OF WEST MISSISSIPPI,
New Orleans, La., May 29th, 1865.

General Orders No. 63.

I. Under the authority of the executive order of April 29th, 1865, the limits of military occupation will be extended by the commanders of departments and of districts reporting direct to these headquarters, so as to include all sections of the country east of the Mississippi (within the limits of the division) where the paramount authority of the United States is recognized, and the inhabitants accept in good faith the objects of the President's order to "relieve all loyal citizens and well-
42 disposed persons residing in insurrectionary districts from unnecessary commercial restrictions, and to encourage them to return to peaceful pursuits," and conform to the conditions prescribed by the order and the regulations made in pursuance of it.

II. All military orders or regulations conflicting with the executive

order, or restricting in any degree the commercial intercourse therein authorized, are revoked, and the action of military commanders in relation to this intercourse will be limited to giving the agents of the Treasury Department such facilities and assistance in the execution of their duties as may be necessary and proper. All taxes, imposts, or contributions levied by military authority upon any article of commerce except such as may be absolutely indispensable for police and sanitary purposes will be discontinued.

III. The benefit intended to be secured by the President's order are contingent not only upon the disposition, but upon the ability, of the inhabitants to maintain peace and order in their own communi-
43 ties, and these benefits will be given or withheld as this disposition and ability may be manifested. In any measure that may be taken by the well-disposed inhabitants for the maintenance of order and quiet, the assistance of the troops will be cheerfully given; but if, in any district, guerrilla parties, jayhawkers, and other evil-doers are countenanced, encouraged, or habored, all commercial intercourse will not only be interdicted, but the troops sent to repress such disorders will be maintained at the expense of the inhabitants.

By order of Major General E. R. S. Canby:

(Signed) C. T. CHRISTENSEN,
L't Colonel, Ass't Adj't Gen'l.

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La., February 25th, 1869.

A true copy:

(Signed) W'M RUSSELL, JR.,
B'v't Major U. S. Army, Act'g Ass't Adj't Gen'l.

Document filed March 29th, 1869, *for plaintiff.*

Public notice.

44 HEADQUARTERS DEPARTMENT OF THE GULF,
OFFICE OF PROVOST MARSHAL GENERAL,
New Orleans, June 7th, 1865.

In accordance with instructions from the major general commanding the department, no military permits for merchandise, or passes for persons and vessels for all the country lying west of the Mississippi River, as well as east, and within the lines of military occupation as defined in General Order No. 84, headquarters Department of the Gulf, will be required from the military authorities.

All matters of trade will now be within the management and control of the Treasury Department.

(Signed) F. A. STARRING,
Col. & Prov. Mar. Gen'l of Department.

Testimony for defendant.—Filed March 29th, 1869.

Thomas Janny, sworn for defendant, says:

During the war I resided up Red River and in New Orleans.
45 I lived in Alexandria, Rapides Parish. I first came to New Orleans from Memphis a few days after Butler took possession of New Orleans. I came down in a skiff. I left New Orleans by the way of Lake Pontchartrain, and went to Mobile by land, and from there

went to Kentucky with the army; and from Kentucky came down to Vicksburg, and thence to Red River. When General Banks went up Red River, I brought my family down to New Orleans. About a thousand other persons accompanied myself and family to New Orleans; and, after coming to this city, some who chose to go back went back. Can't say when Baton Rouge was occupied by the federals, but I believe it was in 1862. The communications between Baton Rouge and the stations on the Jackson railroad were very frequent. I knew a gentleman by the name of Ludwigsen, who often—two or three times a month—
46 went from Baton Rouge and Bayou Sara to stations on the Jackson railroad, and from the plantations of Minor and Doyal to the same stations on the railroad. I don't think the communication between Baton Rouge and the stations on the railroad were any more difficult than the route from Alexandria to New Orleans. I am satisfied that it was less difficult.

Cross-examined.

There was no steamboats running from Memphis at the time I first came down to New Orleans, as aforementioned. At the time I came to New Orleans from Alexandria, I paid my passage in gold on the Blackhawk, and took the oath of allegiance in this city, and after that I remained always in the federal lines. I never was on the line of the Jackson railroad during the war after I came down from Alexandria with my family. I never left the city after coming down from
47 Alexandria with my family. I stopped at Baton Rouge about a day and a half, when I was coming down from Alexandria.

(Signed) TH. JANNY.

Sworn to and subscribed before me this 29th March, 1869.

(Signed) D. URBAN,
U. S. Commissioner.

Testimony of Charles Gayarre on behalf of plaintiff.—Filed March 29, '69.

U. S. circuit court.

WALTER L. CAMPBELL
vs.
L. F. GENERES. } No. 5688.

STATE OF LOUISIANA
Circuit Court of the United States, District of Louisiana:

Interrogatories to be exhibited to Charles Gayarré, a witness for the plaintiff in a cause depending in the said court, in which Wal-
48 ter L. Campbell is plaintiff, and Louis F. Generes is defendant.

1st. Do you know the parties plaintiff and defendant?

2d. Where did Walter L. Campbell reside during the year 1863, and from that time until 1867?

3d. Were the confederate or U. S. forces in possession of the parish of St. Helena, where he resided in 1863? What were the lines of military occupation of the respective forces in 1863, and from that time to the summer of 1865?

4th. What obstructions were there to intercourse between that settlement and New Orleans in 1863, 1864, 1865, from the military forces of both parties?

5th. When did you come to New Orleans yourself from St. Helena Parish?

6th. When did Walter L. Campbell come to New Orleans in 1865? Was the intercourse free at that time, or were there not apprehensions of danger and difficulty in coming to New Orleans prior to the month of June, 1865? What were the means of transportation between St. Helena
49 Parish and New Orleans in June, 1865; was there any regular mail or passenger communication at that time between Mr. Campbell's residence, or neighborhood, and New Orleans? State the general condition of said parish at that time, June, 1865.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Att'ys for Plaintiff.

Cross-interrogatories by defendant.

1st. Did you know the plaintiff before the late war? If yes, where did you know him? Was he not a resident of the city of New Orleans?

2d. What business was the plaintiff following in the city of New Orleans; and why did he leave New Orleans to go to the parish of St. Helena? Did he break up business to proceed to the parish of St. Helena; and did he take along with him a remnant of his stock, and what was it?

3d. After the plaintiff got to St. Helena, could he not have
50 come back to New Orleans if he wanted to? Are you not aware that divers persons desiring to come to New Orleans at that same period of time did succeed in coming hither?

4th. After the fall of Port Hudson, was not that part of the country where the plaintiff resided altogether open, through which persons having business in New Orleans might and did, in fact, pass; and did not the United States vessels afford passage across the lakes to all who took the oath of allegiance?

5th. Please state everything you know tending to show that, after the fall of Port Hudson, persons desiring to come from the parish of St. Helena to New Orleans have actually done so? Please state also the date of the fall of Port Hudson.

(Signed) CYPRIEN DUFOUR,
Attorney for Defendant.

Testimony of Cha's Gayarre, in answer to the direct and cross-interrogatories propounded.

51 To the interrogatories propounded to me by plaintiff in this case, I return the following answers:

1st. Yes.

2d. Walter L. Campbell resided in my neighborhood, in the parish of St. Helena, during the year 1863, and also during 1864 and 1865. My impression is that he continued to reside there until 1867.

3d. The confederate forces were in possession in 1863 and 1864 until August. The military occupation of the confederates extended over the parishes of Washington, St. Tammany, Livingston, East and West Feliciana, and East Baton Rouge, with the exception of the town of Baton Rouge, and other points on the banks of the Mississippi. After August, 1864, that occupation became more restricted in the direction of the Mississippi. From August, 1864, when Port Hudson fell, to the surrender of Lee, in April, 1865, the parishes I have mentioned (the confed-

erate forces having been mostly withdrawn) remained open to
52 the incursions of the troops of the United States; they did not, however, take possession, but merely passed through; for instance, on their going to and returning from Mobile.

4th. The obstructions were very great in 1863, and in 1864, until August, from the military forces of both parties. After that time they were much less.

5th. In the latter part of May, or in the beginning of June, 1865.

6th. Walter L. Campbell came to New Orleans in 1865 on the same day on which I came. I recollect that we met on the road. The intercourse was free at that time, but before there had been apprehensions of dangers and difficulties. At the time I came to New Orleans, as above stated, the Jackson railroad was in operation as far up as Pontchatoula. My residence being about 42 miles above that place, I drove to it in my carriage to take the cars. Mr. Campbell had recourse to the same means of transportation. The parish of St. Helena remained
53 under the civil authority and the military authority of the confederates until the latter part of May, 1865. But after the fall of Port Hudson that military authority was very insignificant. A federal force of five hundred men might, in my opinion, have overrun the parish.

Answers to cross-interrogatories.

1st. I knew the plaintiff in New Orleans before the late war. I believe he resided there.

2d. He was a negro trader. I do not know why he left New Orleans, nor if he broke up business there to proceed to the parish of St. Helena. He had a depot of negroes in that parish. I do not know that he took along with him to St. Helena any remnant of his stock in New Orleans.

3d. I do not know if the plaintiff could have returned to New Orleans in case he had desired it. Divers persons passed through the lines; they were generally traders and speculators or fugitives from New
54 Orleans. My neighbor, Mr. Martin, went to town and returned.

4th. In 1863 and 1864, until August, it was exceedingly difficult, and even perilous, to communicate with New Orleans. But after that time, I think, there was not much difficulty in passing to New Orleans, particularly by the way of Baton Rouge, provided one took the oath of allegiance; some persons did so. I do not know the U. S. vessels afforded passage across the lake to all who took the oath of allegiance.

5th. I believe that I have answered this question by what I have already stated. I do not recollect the precise date of the fall of Port Hudson, but I believe that it was in August, 1864.

(Signed) CHA'S GAYARRÉ.

Hearing and submission of cause.

Extract from the minutes of Monday, March 29th, 1869.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

55 By consent of counsel this cause is submitted to the court on briefs to be furnished.

Agreement.—Filed April 10th, 1869.

Circuit court of the United States, district of Louisiana.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

We, the attorneys in this cause for the plaintiff and defendant, agree to submit this cause to the court without a jury, under the conditions of the act of Congress, each party reserving their right to take exceptions to the decision of the court upon points made upon the evidence on file, waiving objections to the manner in which it was taken, and the same to be regarded as if duly taken.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Plaintiff.

(Signed) CYPRIEN DUFOUR, *for Def't.*

56 *Judgment.*

Extract from the minutes of Saturday, June 5th, 1869.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the defendant's plea of prescription be overruled, and that there be judgment in favor of the plaintiff, Walter L. Campbell, and against the defendant, Louis F. Generes, for the sum of six thousand three hundred dollars, with 8% interest thereon from 4th April, 1861, till paid, and costs of suit.

Defendant's bill of exceptions.—Filed June 5th, 1869.

Circuit court of the United States.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Be it known that on the trial of this cause the counsel for defendant argued as follows, viz:

57 The evidence shows that the plaintiff was doing business in New Orleans, and the note sued upon was dated at New Orleans, April 4th, 1861, payable at the counting house of Abat, Generes & Co., in New Orleans, two years after its date, to the order of and endorsed by the defendant. The suit was brought on the 18th November, 1868, and the petition alleges that at the maturity of the note, to wit, the 7th April, 1863, there was a civil war existing in Louisiana and other States of the Union, and that all intercourse between New Orleans and the place of the then residence of the plaintiff, viz, the parish of St. Helena, in Louisiana, was interrupted, and that the petitioner was wholly unable to make a presentment and demand of said note. But the evidence shows that said plaintiff left New Orleans in the fall of 1861; he was doing

business here; was a regular negro-trader in the city of New Or-
58 leans; had obtained possession of the note sued on, and in the course of his business; when, in the fall of 1861, the city of New Orleans being then besieged by the federal fleet, the plaintiff closed his business and went to his summer residence on the line of the New Orleans and Jackson railroad, in the parish of St. Helena. The said counsel argued, upon this statement of facts, that the impossibility to make a presentment of the note at its maturity was not what was termed by the law vis major, but a matter entirely of plaintiff's own seeking. The plaintiff, being shown to have spontaneously so circumstanced himself as to bring upon him the alleged impossibility to act at the maturity of the note is not entitled to the favor of the doctrine contra non valentum, etc. Furthermore, the said counsel argued that long before the maturity of said note New Orleans was in possession of the government, and, in virtue of the President's proclamation inviting all loyal citizens to return, the plaintiff might have been here attend-
59 ing to his business, if he thought proper. It is shown by the evidence that the road from the plaintiff's house, in St. Helena, to the city of Baton Rouge, was only about fifty miles; that there were a great many people who made it a trade, throughout the duration of the war, to travel between Baton Rouge and the plantations on the river coast, to and from the Jackson railroad stations. A witness says, and he is not contradicted, "I can't say when Baton Rouge was occupied by the federals, but I believe it was in 1862. The communications between Baton Rouge and the stations on the Jackson railroad we [illegible] quent."

Said counsel urged that, as the plaintiff had gone into the opposite side, he might have returned, and consequently the major had no existence in fact.

But the court overruled the pleas of prescription and of v test urged by the defendant.

60 The said counsel furthermore urged that the plain make a presentment and a protest of the note so soon of action had been resumed throughout the country. It is i the plaintiff returned to New Orleans in the summer of 186 the 12th of June, 1865, which was about two years and after his note had matured. No protest from that time wa The present suit was filed on the 18th of November, 186 counsel argued that under the circumstances shown, even been hitherto a room for the plea of vis major, there was a in not protesting in reasonable time.

But this plea was likewise overruled by the court.

The said counsel argued that under the provisions of t of Louisiana, viz, art. 3420, 3487, 2512, 3488, et seq., that the rule contra non valentum will not apply except in cases expressly mentioned, and that these exceptions do not apply to the present cause.

61 But this plea was likewise overruled by the court.

And lastly, the said counsel argued that the consideration of the note was proved in the evidence to be for slaves sold to the maker, and was therefore illegal. The testimony on this point is as follows: „The note, the whole of it, was given to Mr. Campbell for a purchase of slaves by my brother from him. Mr. Campbell at that time was a slave-dealer in New Orleans. He was a regular slave-dealer, and had his depot on Baronne street, in New Orleans, and was engaged in that business for several years."

The said counsel argued that such actions could not be held upon

Agreement.—Filed April 10th, 1869.

Circuit court of the United States, district of Louisiana.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

We, the attorneys in this cause for the plaintiff and defendant, agree to submit this cause to the court without a jury, under the conditions of the act of Congress, each party reserving their right to take exceptions to the decision of the court upon points made upon the evidence on file, waiving objections to the manner in which it was taken, and the same to be regarded as if duly taken.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Plaintiff.

(Signed) CYPRIEN DUFOUR, *for Def't.*

56 *Judgment.*

Extract from the minutes of Saturday, June 5th, 1869.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the defendant's plea of prescription be overruled, and that there be judgment in favor of the plaintiff, Walter L. Campbell, and against the defendant, Louis F. Generes, for the sum of six thousand three hundred dollars, with 8% interest thereon from 4th April, 1861, till paid, and costs of suit.

Defendant's bill of exceptions.—Filed June 5th, 1869.

Circuit court of the United States.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Be it known that on the trial of this cause the counsel for defendant argued as follows, viz:

57 The evidence shows that the plaintiff was doing business in New Orleans, and the note sued upon was dated at New Orleans, April 4th, 1861, payable at the counting house of Abat, Generes & Co., in New Orleans, two years after its date, to the order of and endorsed by the defendant. The suit was brought on the 18th November, 1868, and the petition alleges that at the maturity of the note, to wit, the 7th April, 1863, there was a civil war existing in Louisiana and other States of the Union, and that all intercourse between New Orleans and the place of the then residence of the plaintiff, viz, the parish of St. Helena, in Louisiana, was interrupted, and that the petitioner was wholly unable to make a presentment and demand of said note. But the evidence shows that said plaintiff left New Orleans in the fall of 1861; he was doing

business here; was a regular negro-trader in the city of New Or-
58 leans; had obtained possession of the note sued on, and in the course of his business; when, in the fall of 1861, the city of New Orleans being then besieged by the federal fleet, the plaintiff closed his business and went to his summer residence on the line of the New Orleans and Jackson railroad, in the parish of St. Helena. The said counsel argued, upon this statement of facts, that the impossibility to make a presentment of the note at its maturity was not what was termed by the law vis major, but a matter entirely of plaintiff's own seeking. The plaintiff, being shown to have spontaneously so circumstanced himself as to bring upon him the alleged impossibility to act at the maturity of the note is not entitled to the favor of the doctrine contra non valentum, etc. Furthermore, the said counsel argued that long before the maturity of said note New Orleans was in possession of the government, and, in virtue of the President's proclamation inviting all loyal citizens to return, the plaintiff might have been here attend-
59 ing to his business, if he thought proper. It is shown by the evidence that the road from the plaintiff's house, in St. Helena, to the city of Baton Rouge, was only about fifty miles; that there were a great many people who made it a trade, throughout the duration of the war, to travel between Baton Rouge and the plantations on the river coast, to and from the Jackson railroad stations. A witness says, and he is not contradicted, "I can't say when Baton Rouge was occupied by the federals, but I believe it was in 1862. The communications between Baton Rouge and the stations on the Jackson railroad were very frequent."

Said counsel urged that, as the plaintiff had gone into the lines of the opposite side, he might have returned, and consequently the alleged vis major had no existence in fact.

But the court overruled the pleas of prescription and of want of protest urged by the defendant.

60 The said counsel furthermore urged that the plaintiff failed to make a presentment and a protest of the note so soon as freedom of action had been resumed throughout the country. It is in proof that the plaintiff returned to New Orleans in the summer of 1865, to wit, on the 12th of June, 1865, which was about two years and two months after his note had matured. No protest from that time was ever made. The present suit was filed on the 18th of November, 1868. The said counsel argued that under the circumstances shown, even if there had been hitherto a room for the plea of vis major, there was a clear laches in not protesting in reasonable time.

But this plea was likewise overruled by the court.

The said counsel argued that under the provisions of the civil code of Louisiana, viz, art. 3420, 3487, 2512, 3488, et seq., that the rule contra non valentum will not apply except in cases expressly mentioned, and that these exceptions do not apply to the present cause.

61 But this plea was likewise overruled by the court.

And lastly, the said counsel argued that the consideration of the note was proved in the evidence to be for slaves sold to the maker, and was therefore illegal. The testimony on this point is as follows: „The note, the whole of it, was given to Mr. Campbell for a purchase of slaves by my brother from him. Mr. Campbell at that time was a slave-dealer in New Orleans. He was a regular slave-dealer, and had his depot on Baronne street, in New Orleans, and was engaged in that business for several years."

The said counsel argued that such actions could not be held upon

general principles, and particularly were prohibited by art. 128 of the constitution of Louisiana, as follows: "Contracts for the sale of persons are null and void, and shall not be enforced by the courts of this State."

But this plea was also overruled by the court.

62 To all which rulings the counsel for said defendant respectfully excepts, and presents this his bill of exceptions for the signature of his honor the judge.

(Signed) E. H. DURELL, *Judge.*

Rule for a new trial.

Extract from the minutes of Tuesday, June 15th, 1869.

WALTER L. CAMPBELL *vs.* LOUIS F. GENERES. } No. 5688.

On motion of C. Dufour, counsel for the defendant, and on filing defendant's affidavit, such as is required by law, it is ordered by the court that the plaintiff do show cause, on Wednesday, 23d inst., at 11 a. m., why a new trial should not be granted in this cause, on the ground of newly-discovered evidence unknown to said defendant before the judgment herein rendered, as fully stated in said affidavit.

63 *Grounds and affidavit for a new trial.—Filed June 15th,* 1869.

Affidavit.

Louis F. Generes, being sworn, says that since this case was tried and decided he has discovered new evidence, which is most material in the issue between the plaintiff and himself; that the name of the witness is Mrs. H. Henri, and resided in the city of New Orleans; that this witness will swear that the plaintiff was resident in New Orleans before the late war, and was still residing here in the month of February, 1862; that it is the object of the affiant to show by the witness that he purposely left his domicile in New Orleans to proceed into the confederacy a very short time previous to the advent of the federal forces, viz, about the latter part of the month of February, 1862, and thus putting himself into the impossibility of protesting the note sued upon; that this witness

64 was unknown to affiant before the trial of this cause, and hence the testimony was not produced, notwithstanding all due diligence used to that effect by affiant; that affiant makes this affidavit not for delay, but conscientiously, and with a hope of securing justice, believing the evidence material to his cause, and having discovered it since the judgment was rendered, although he had used every effort and diligence in his power to procure the testimony necessary to the cause.

(Signed) L. F. GENERES.

Sworn to and subscribed before me June 15th, 1869.

F. B. VINOT, *D'y Clerk.*

Marshal's return on the foregoing rule.

Received, June 16th, 1869, by the U. S. marshal, and served by leaving a copy of this paper in hands of A. H. Spofford, of the firm aforesaid, at 27 Commercial Place, New Orleans, on the 17th day

65 of June, A. D. 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Order discharging rule and refusing new trial.

Extract from the minutes of Wednesday, June 23d, 1869.

W. L. CAMPBELL
vs.
L. F. GENERES. } No. 5688.

The rule taken by the defendant on 15th instant was called—C. Dufour for plaintiff in rule, H. M. Spofford for defendant in rule—when after hearing the grounds of the rule and argument of counsel, for reasons orally assigned ordered that the rule be discharged and a new trial refused, with costs.

Judgment.—From judgment docket.

66 Circuit court of the United States, fifth circuit and district of Louisiana.—April term, 1869.

NEW ORLEANS, *Saturday, June 5th*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the defendant's plea of prescription be overruled, and that there be judgment in favor of the plaintiff, Walter L. Campbell, and against the defendant, Louis F. Generes, for the sum of six thousand three hundred dollars, with 8% interest thereon from 4th April, 1861, till paid, and costs of suit.

Judgment rendered June 5th, 1869.
Judgment signed June 24th, 1869.
(Signed) E. H. DURELL, *Judge.*

Petition for writ of error, and order thereon.—Filed June 24th, 1869.

U. S. circuit court.

67 WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

To the honorable the circuit court of the United States for the fifth circuit and for the district of Louisiana.

The petition of Louis F. Generes, defendant herein, respectfully shows that he is aggreived by the final judgment rendered against him in the suit of Walter L. Campbell, numbered 5688 of the docket of this court, and he is advised that there is error therein to his prejudice, and he is desirous that a writ of error be allowed him therefrom to the Supreme Court of the United States.

Wherefore he prays that a writ of error be granted, returnable to the next term of the Supreme Court of the United States, and that the same

may operate as a supersedeas upon his giving bond in such amount as the court may direct and order.

68 (Signed) CYPRIEN DUFOUR, *Counsel.*

Order.

A writ of error to operate as a supersedeas is allowed in this case as prayed for, and according to law returnable to the Supreme Court of the United States on the first Monday in December next, the petitioner giving bond in the sum of fifteen thousand seven hundred and fifty dollars, with good and solvent security, conditioned as the law directs.

New Orleans, June 24th, 1869.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed June 29th, 1869.

United States circuit court.

WALTER L. CAMPBELL
vs.
LOUIS F. GENERES. } No. 5688.

Know all men by these presents that we, Louis F. Generes, as
69 principal, and Cyprien Dufour, Joseph Lallande, and Achille Chiapella as sureties, are held and firmly bound unto Walter L. Campbell in the full and just sum of fifteen thousand seven hundred and fifty dollars, to be paid to the said Walter L. Campbell, his certain attorney, executors, and administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 29th day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Walter L. Campbell is plaintiff and Louis F. Generes, defendant, judgment was rendered against the said Louis F. Generes, defendant, and the said Louis F. Generes
70 having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Walter L. Campbell, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such that if the said Louis F. Generes shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CYPRIEN DUFOUR. [L. S.]
" J. LALLANDE. [L. S.]
" A. CHIAPELLA. [L. S.]
" L. F. GENERES. [L. S.]

Sealed and delivered in the presence of—

(Signed) CYPRIAN DUFOUR, *Att'y.*

71 United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 70 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the case of Walter L. Campbell vs. Louis F. Generes, No. 5688 of the docket, so far as the same now remains of record or on file in said court.

Witness my hand and seal of said court, at the city of New Orleans, this 24th day of September, A. D. 1869.

[SEAL.] D. URBAN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 24th day of September, A. D. 1869.

E. H. DURELL, *Judge.*

[Five-cent internal revenue stamp affixed and canceled.]

72 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Walter L. Campbell greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Louis F. Générés is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

(Indorsed:) United States circuit court. No. 5688. Louis F. Générés, pl'ff in error, vs. Walter L. Campbell. Citation.

Marshal's return.

Received Jun. 29, 1869, the U. S. marshal, and on the same day, month, and year served a copy of the within citation in error on Walter L. Campbell, through his attorney of record, John A. Campbell, by handing the same to him in person, at his office, No. 27 Commercial Alley, in the city of New Orleans.

S. W. REED,
Dy U. S. Marshal.

73 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between Walter L. Campbell and Louis F. Générés, a manifest error hath happened to the great damage of the said Louis F. Générés, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 24th of June, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) United States circuit court. No. 5688. Walter L. Campbell vs. Louis F. Générés. Writ of error.

Filed June 24, 1869.

F. B. VINOT, *Dy Clk.*

(Indorsement on cover:) No. 294. Louis F. Générés, plaintiff in error, vs. Walter L. Campbell. Louisiana C. C. U. S.
Filed 27 November, 1869.

Supreme Court of the United States.

LOUIS F. GÉNERÉS

vs.

WALTER L. CAMPBELL.

LOUIS JANIN,
of Counsel for Plaintiff in error.

P. L. SCHRIFTGIESSER, PRINTER, 309 Eighth st. northwest.

73 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between Walter L. Campbell and Louis F. Générés, a manifest error hath happened to the great damage of the said Louis F. Générés, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 24th of June, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) United States circuit court. No. 5688. Walter L. Campbell vs. Louis F. Générés. Writ of error.

Filed June 24, 1869.

F. B. VINOT, *D'y Clk.*

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vs.

WALTER L. CAMPBELL.

LOUIS JANIN,
of Counsel for Plaintiff in error.

P. L. SCHRIFTGIESSER, PRINTER, 309 Eighth st. northwest.

73 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between Walter L. Campbell and Louis F. Générés, a manifest error hath happened to the great damage of the said Louis F. Générés, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 24th of June, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

(Indorsed:) United States circuit court. No. 5688. Walter L. Campbell vs. Louis F. Générés. Writ of error.

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LOUIS JANIN,

of Counsel for Plaintiff in error.

P. L. SCHRIFTGIESSER, PRINTER, 309 Eighth st. northwest.

Supreme Court of the United States.

LOUIS F. GÉNERÈS

vs.

WALTER L. CAMPBELL.

Brief for the Plaintiff in error.

This case is a writ of error to the Circuit Court of the United States for the District of Louisiana, the District Judge presiding.

The test-oath has lately been abolished by Congress. It is to be hoped that all political differences between citizens of the United States arising out of the late unfortunate war will soon disappear and be forgotten. But that the holder of a promisory note shall be entitled to immunity from the ordinary rules of law merely because he adhered to the party in insurrection, while his adversary steadily adhered to the old order of things, and shall now receive the payment of his claim in the United States currency, whereas if he had maintained or renewed his allegiance to the Government of the Union and had presented the note and protested it at its maturity he would have received his payment in depreciated confederate notes, is a proposition too exorbitant to be received with indulgence.

And this is the anomalous spectacle presented in the present case.

This suit was instituted upon a promissory note executed at

New Orleans on April 4, 1862, by J. L. Génerès, to the order of L. F. Génerès, for $6,300, payable two years after date at the office of Abat, Génères & Co., in New Orleans, with 8 per cent. interest from date.

It was brought against the indorser, L. F. Génerès, the present plaintiff in error. (Rec. p. 2).

The petition avers (p. 1) that when said note became due, to wit, on the 7th of April, 1863, there was a civil war existing in Louisiana and other States of the Union; that all intercourse between New Orleans and the place of the then residence of the plaintiff, to wit, the parish of St. Helena, was interrupted and prohibited; that the petitioner was unable to make the presentment and demand of the note at the place of payment by reason of the existing war and the prohibition and interruption of intercourse thereby created; that the petitioner could not come from said parish; that this condition continued until the month of June, 1865; that immediately after its cessation the petitioner came to New Orleans and demanded payment of the note at the house of Abat, Génerès & Co., and that the defendant had due and legal notice of all of the foregoing circumstances.

The answer (p. 3) sets forth:

1. That the petitioner discloses no cause for action.

2. That the defendant is not liable as indorser, from want of protest and notice of protest.

3. That the note sued on is extinguished by prescription; and concludes with a general denial.

By a supplemental answer (p. 18) the defendant sets forth that the note was given for a purchase of slaves, and could not, therefore, under the constitution of Louisiana, give rise to an action.

Upon these pleadings the parties took evidence, and went to trial before the court, having waived a jury (p. 18).

The defendant, now plaintiff in error, took out a bill of exceptions, setting forth the most material facts in evidence, and

excepting to the overruling of the points of law he had requested the court to hold (p. 18).

The prescription relied on in the answer (p. 3) is that of five years from the maturity of a promissory note established by art. 3505 of the Civil Code of Louisiana, which also runs against minors and interdicted persons (art. 3506).

The distinguished counsel for the defendant in error, on page 3 of the brief he has filed in this court, objects to this bill of exceptions on the ground that it was signed but not sealed.

By the 34th section of the juridiciary act of Sept. 24, 1789, the laws of the several States are to be regarded as rules of decision in trials at common law in the courts of the United States, (1 Stat. 92.) The form of process was regulated by an act of May 8, 1792, (1 Stat. 275.) The provisions of this act were extended by an act of May 19, 1828, (4 Stat. 278,) to the States admitted into the Union since the 29th of Sept., 1789, but the 4th section of this act declares that none of the provisions of that act shall be construed as applying to the State of Louisiana.

The State of Louisiana being the only civil law State of the Union, the court is aware that cases coming up from that State often present, in matters of practice, questions which may appear anomalous to a common-law lawyer, though in substance the civil law of Louisiana is almost identical with the law of equity. Thus it happens, that while the want of a seal to a bill of exceptions may be a valid objection in a case originating in a common law State, it is not in a Louisiana case. The undersigned considers it his duty to state that in his very long professional practice in the State of Louisiana he has rarely if ever seen on a bill of exceptions the signature of the judge, accompanied by what by courtesy is called "a seal." A seal is a perfectly meaningless matter in the law of Louisiana, or of the other civil law countries. Of this there is of course no evidence in the record, as the point was

not made in the court below. The counsel for the defendant in error says, on p. 3 of his brief, that "without waiving objection to the frame of the bill of exceptions, either as not sealed and as containing no statement of facts, nor proper presentation of the questions at issue, we shall proceed to discuss the questions as they are presented by the testimony in the record, assuming it to be all before the court." And thereupon the counsel discusses the evidence as if this was a case in chancery.

The undersigned is astonished at a course so palpably irregular, considering from what source it comes, and will not imitate it. He will review this bill of exceptions, which in reality brings to the notice of the Supreme Court every matter of fact and every point of law treated in the brief of the learned counsel for the defendant in error, whose criticism can at best only apply to the not usual introductory phrase: "Be it known that at the trial of this cause the counsel for defendant argued as follows, viz," &c. And then he sets forth—

I. the allegations of the petition, to wit, "that the note sued on was dated at New Orleans on April 4, 1861; was payable two years after date, to wit, April 7, 1863; that this suit was instituted on November 18, 1868; that at the date of the maturity of the note a civil war existed in Louisiana and other States of the Union; and that all intercourse between New Orleans and the place of the then residence of the plaintiff, the parish of St. Helena, in Louisiana, was interrupted, and that the plaintiff was wholly unable to make a presentment and demand of said note."

Now, this correct statement of the contents of the petition was evidently made in order to present the entire case in the bill of exceptions, and though it may be surplusage, it certainly is not objectionable.

II. Thus, the bill of exceptions states: "*The evidence shows* that said plaintiff left New Orleans in the fall of 1861; he was doing business here; he was a regular negro-trader in the city

of New Orleans; had obtained possession of the note sued on in the course of his business; and went to his summer residence on the line of the New Orleans and Jackson railroad, in the parish of St. Helena."

Now, this is undoubtedly a substantive statement of the ultimate facts disclosed by the evidence, and not the evidence itself, and therefore eminently fit to be embodied in a bill of exceptions, and is introduced with the apt words: "*the evidence shows*," and this is attested by the signature of the judge.

III. In the same paragraph the bill of exceptions further states that "*it is shown by the evidence* that the road from the plaintiff's house in St. Helena to the city of Baton Rouge was only about fifty miles; that there were a great many people who made it a trade throughout the duration of the war to travel between Baton Rouge and the plantations on the river coast, to and from the Jackson railroad stations. A witness says, and he is not contradicted. 'I can't say when Baton Rouge was occupied by the federals, but I believe it was in 1862. The communications between Baton Rouge and the stations on the Jackson railroad were very frequent.'"

This is also a substantive statement of ultimate facts resulting from the evidence, like the former one, and part of what the judge certifies, and certainly quite unexceptionable in form and substance. The counsel might here have continued and at once completed the entire statement of the facts of the case. But he chose to set forth at once the conclusion which he wished the court to draw from this portion of the facts of the case, viz: "that the impossibility to make a presentment of the note at its maturity was not what was termed by the law *vis major*, but a matter entirely of plaintiff's own seeking—that the plaintiff, being shown to have spontaneously so circumstanced himself as to bring upon himself the alleged impossibility to act at the maturity of the note, is not entitled to the favor of the doctrine *contra non valen-*

tem, &c.; furthermore, that "long before the maturity of the note New Orleans was in possession of the Government, and, in virtue of the president's proclamation inviting all loyal citizens to return, the plaintiff might have been here to attend to his business if he thought proper—and that, as the plaintiff had gone into the lines of the opposite side, he might have returned, and, consequently, the alleged *vis major* had no existence in fact."

"But" proceeds the bill of exceptions, "the court overruled the pleas of prescription and of want of protest urged by defendant."

What we have transcribed thus far constitutes by itself a complete bill of exceptions, viz: a distinctive statement of facts, a prayer to the court,—though he calls it "urged"—to draw from these facts certain conclusions of law, and notice of the decision of the court refusing to rule as requested. It might at once have been tendered to the judge for his signature. What remains of this bill of exceptions might have formed three other bills of exceptions. But the counsel thought he would simplify the matter by embracing the whole in one bill of exceptions, and he does that with great clearness and distinctness. Each of these three propositions is a separate statement of one or more facts, a request for a legal decision upon it, and a notice of the judge's refusal. They do not run into one another, and are just as clearly separated as if each had been the subject of a different bill of exceptions.

IV. The bill of exceptions further sets forth (p. 19) that "*It is in proof* that the plaintiff returned to New Orleans in the summer of 1865, to wit, on the 12th of June, 1865, which was about two years and two months after his note had matured. No protest from that time forth was ever made. The present suit was filed on the 18th of November, 1868."

Upon these facts the counsel submitted to the court that if there had been hitherto room for the plea of *vis major* there were clear laches in not protesting in reasonable time.

But this plea was likewise overruled by the court.

V. The counsel further made the point of law, "that under the provisions of the Civil Code of Louisiana, viz: arts. 3420 3487, 2512, 3488 *et seq.*, the rule '*contra non valentem*, &c., will not apply except in cases expressly mentioned, and that these exceptions do not apply to the present case.'"

But this plea was likewise overruled by the court.

VI. Lastly, the counsel argued that the consideration of the note was *proved in the evidence* to be for slaves sold to the maker, and was therefore illegal. The testimony in this point is as follows: "The note, the whole of it, was given to Mr. Campbell for a purchase of slaves by my brother from him. Mr. Campbell, at that time, was a slave-dealer in New Orleans. He was a regular slave-dealer and had his depot at New Orleans, in Baronne Street, and was engaged in that business for several years."

And thereupon said counsel argued, that such actions could not be maintained upon general principles, and were particularly prohibited by act 128 of the Constitution of Louisiana, which reads as follows: "Contracts for the sale of persons are null and void, and shall not be enforced by the courts of this State."

But this plea was also overruled by the court, wherefore the counsel excepted to all these rulings of the court and presented this bill for the signature of his honor the judge.

The undersigned submits that this is a very good bill of exceptions. It combines a concise and clear statement of the facts of the case, with an equally clear explanation of the points of law which the counsel desired the court to rule. If in a few words it differs from the usual style employed in such documents, this may be attributed to the circumstance that English is not the mother tongue of the able counsel who drew it up. But its meaning cannot for a moment be misunderstood by any candid reader. It has the very substantial merit of bringing the whole case, both the facts and the law, before the court,

and this is best proved by the fact that it embodies every point noticed in the brief of the counsel for the defendant in error.

No reason can be shown why this court should believe that the judge did not know what he was signing, when every statement of fact in the bill of exceptions commences with the words: "*It is in evidence, or in proof.*" The signature of the judge at the foot of this paper certifies it as stating both the facts and the points of law that were made, correctly.

After this full review of the case the undersigned will occupy but little room with discussion. Of course the court will notice no evidence but what is mentioned in the bill of exceptions. That shows want of presentment, notice, protest and notice of protest. We shall not detain the court for one moment on these familiar points.

But it will be noticed that the evidence shows that it would not have been difficult for Campbell to visit New Orleans at the time of the maturity of the note. He had only to return to his allegiance according to President Lincoln's proclamation, and many persons, even without taking the amnesty oath, succeeded in visiting New Orleans.

The defendant in error shows a remarkable aptitude for speculation. He first demanded payment of the note on June 12, 1865, and, being refused, waited until the 18th of November, 1868, three years and five months longer, when, by the fall of gold, currency had greatly appreciated, before he brought this suit. Can such laches be tolorated to the prejudice of an indorser, who, owing to the want of regular presentment, notice, protest, and notice of protest, had every reason to consider himself discharged?

When Campbell was a negro trader, and until 1867, he was a citizen of Louisiana. About this time he probably ascertained that while the courts of Louisiana refused to enforce the payment of debts arrising out of sales of slaves, Judge Durell, of the United States District Court, who also for a number of years, and until lately, presided in the Circuit Court,

held an opposite doctrine. And thereupon he moved across the line into Mississippi and brought this suit.

The Supreme Court of Louisiana (21 Annual Rep. 66) says, that under the jurisprudence of the State, as well settled, the obligations arising out of the sale of slaves in 1861 are null and void and cannot be enforced. And article 128 of the last constitution of Louisiana is transcribed in the bill of exceptions, on page 20 of the record.

But the most conclusive ground for deciding this case in favor of the plaintiff in error is the plea of prescription. This is zealously discussed by the counsel for the defendant in error (p. 6 of his brief) who relies principally upon the case of Hanger *vs.* Abbott, 6 Wall. 532, and the act of Congress of June 11, 1864 (13 Stat. 123). But this act was evidently passed for the protection of Northern creditors, whom the secession of the States in which their debtors resided prevented from pursuing legal remedies, as in the case of Hanger *vs.* Abbott, and not for the protection of creditors in the seceded States, who, like Campbell, voluntarily, by joining the secession movement, placed themselves in a position whence it was impossible for them to reach their Northern debtors. This act, no more than any other in the statutes, was not passed to protect secessionists.

The numerous decisions referred to in Hanger *vs.* Abbott all related to cases of war where the debtor and creditor belonged to different nations, but not to cases where both parties belonged to the same jurisdiction, as in cases of civil war which end in a reunion of the contending parties. The law of success determines who was right and who was wrong, and he who was in the wrong can claim no immunity from the general law to the prejudice of the party who was in the right.

Nothing is more familiar than that the courts of the United States apply the statutes of limitation of the States in which the suits are tried—the *lex fori* (Abbott's National

Dig. vol. 3, p. 215). If, therefore, a State has a statute which declares that limitation or prescription runs against all persons unless they are included in some exception established by law, and the Supreme Court of that State has decided that a state of war is not one of those exceptions, this court will hold the same doctrine in a case coming from that State. And that is precisely the case in Louisiana, as shown by the recent case of Wm. D. Smith *vs.* Chas. D. Stewart *et als.* (21 Annual La. Rep. 75).

As that decision is a very able and elaborate review of this interesting and important branch of the law of Louisiana, we beg leave to transcribe it entire, and request that it may be considered as part of our brief.

Respectfully submitted,

LOUIS JANIN,
of Counsel for Plaintiff in error.

APPENDIX.

BY CHIEF JUSTICE LUDELING.—(21 Ann. Rep. 75.)

Wm. D. Smith *vs.* Charles D. Stewart *et als*, No. 1197.—Appeal from the District Court, parish of Pointe Coupée. On re-hearing.

The question to be considered first is that raised by the plea of prescription.

The acts complained of were committed on the twenty-ninth of April, 1862; the citations of this suit were served on the thirteenth and fourteenth of March, 1866. The prescription of one year, barring actions resulting from offences or quasi-offences, had accrued, therefore, unless it was interrupted or suspended. It is not pretended that there was any interrup-

tion of prescription. But it is alleged that the prescription was suspended from the date of the commission of the act, which injured the plaintiff, until the fifteenth of June, 1865, by reason of the existence of war and civil commotion in the country, and the impossibility to sue the defendants before the re-organization of the courts after the cessation of hostilities, and the maxim "*contra non valentem agere non currit præscriptio*" is invoked.

The textual provisions of the Civil Code on the subject seem plain and unambiguous; and if the questions were now presented for the first time, for adjudication, there could not be much room for doubting how to determine it. Article 3420 declares "prescription is a manner of acquiring property and discharging debts, by the effect of time, and under the conditions regulated by law." Article 3487 declares "prescription runs against all persons, unless they are included in some exception established by law."

The exceptions are enumerated in the Code. The existence of a state of war is not among the exceptions established by law, neither is the inability to sue, except in a few instances, expressly mentioned. C. C. 3487, 3487 *et seq.*

It is manifest, therefore, that the rule *contra non valentem agere non currit præscriptio* is not recognized in the code, except in cases expressly mentioned.

But, notwithstanding the plain and positive provisions of the Code, our predecessors have, in some instances, recognized the maxim, and, under its equitable rule, have relieved parties against whom prescription was pleaded. As might have been expected, when judges depart from the plain provisions of written law, to decide according to the equity or necessity of each case, conflicting opinions have been the result. And so long as courts continue to act under the notion that their equity powers authorize them to correct, control, moderate or supersede the law, with the view of enforcing rights which are just, great uncertainty and confusion will ensue, and, as Mr. Justice

Blackstone says, courts of equity "will rise above all law, either common or statute, and be most arbitrary legislators in every particular case."

In Rabel *vs.* Porclan, it was held that "this court has settled a different jurisprudence in regard to the prescription in actions on bills of exchange, and notes payable to bearer or order, &c., and has held that the maxim, *contra non valentem*, resting solely on jurisprudence, cannot be applied to such prescription without violating the manifest spirit and intention of express law, that that prescription running against minors and interdicted persons, thereby indicated the policy of the lawmaker and his intention that it should be strictly enforced."

We reiterate that the maxim cannot be applied to suspend the course of prescription against bills of exchange, notes, &c., because it is in opposition to the plain and postive provisions of the Civil Code.

But it is equally a violation of "the manifest spirit and intention of express law" to permit the maxim to apply to the prescription of actions for damages resulting from offences and quasi-offenses.

Article 3506 says: "The prescription mentioned in the preceding article, and those prescribed above, in the first and second paragraphs, run against minors and interdicted persons, reserving, however, to them their recourse against their tutors and curators. They run also against persons residing out of the State."

The prescription pleaded for in this case is mentioned in the first paragraph of section third, chapter third of the Civil Code, and therefore, that prescription also, "running against minors and persons interdicted," and "persons residing out of the State," it is manifest that the legislators did not intend to permit the application of the maxim to it any more than to the prescription against bills of exchange, &c.,

The rule "*contra non valentem*" is applicable to both classes

of cases or to neither. We think it is not applicable to either, Hatch *vs.* Gilmore, 3 An. 510.

Our attention has been called to the opinion of the Supreme Court of the United States, in the case of Hanger *vs.* Abbott, (6 Wallace, p. 542,) in which that august tribunal held that "the rule of the present day is that debts existing prior to the war, but which made no part of the reasons for undertaking it remain entire, and the remedies are revived with restoration of peace."

That this *should be* the rule we believe, but that it *is* the rule we doubt, and we are sustained in our view of the law by the high authority of the Supreme Court of the United States. In McElmoyle *vs.* Cohen, (13 Peters, 327,) the court said:

"It would be strange if, in the now well understood rights of nations to organize their judicial tribunals according to their notions of policy, it should be conceded to them in every other respect than that of prescribing the time within which suits shall be litigated in their Courts. Prescription is a thing of policy growing out of the experience of its necessity; and the time, after which suits or actions shall be barred, has been from remote antiquity fixed by every nation, in virtue of that sovereignty, by which it exercises its legislation for all persons and property within its jurisdiction. This being the foundation of the right to pass statutes of prescription or limitation, may not our States, under our system, exercise this right in virtue of their sovereignty?"

In McIver *vs.* Ragan, 2 Wheaton, p. 28, it was admitted that the case was within the act of limitation of the State of Tennesssee, and not within the letter of the exceptions, and Chief Justice Marshall, as the organ of the Court, said: "Wherever the situation of a party was such as, in the opinion of the Legislature, to furnish a motive for excepting him from the operations of the law, the Legislature has made the exception. It would be going far for this Court to add to these exceptions."

In the case of the Bank of the State of Alabama *vs.* Dalton, reported in 9 Howard, p. 250, the defendant was sued on the very day he moved into the State of Mississippi. The statute of limitations was pleaded in bar of the suit, and the plaintiff insisted that as the laws of Mississippi did not operate on either plaintiff or defendant, nor on the foreign judgment, until the day on which the suit war brought, no bar could be interposed, founded on the lapse of time, as none had intervened. Here it would seem, was a case where there had been no *utile tempus*, and in which the maxim "*contra non valentem agere non currit præscriptio*" might be applied, if Courts were at liberty to supply it. Yet neither the Mississippi Court nor the Supreme Court of the United States would relieve the plaintiff under the rule. The Supreme Court of the United States held that "the acts of limitation furnish rules of decisions. * * * "The question is one of the legislative power, and not of practice." * * * * * * * *

"The act itself makes no exception in favor of a party suing under the circumstances of these plaintiffs. So the Supreme Court of Mississippi held in the case of McClintock *vs.* Rogers, and this is manifestly true on the face of the act. The Legislature having made no exception, the Courts of justice can make none, as this would be legislating." And after having reaffirmed what was said in McIver *vs.* Ragan, already quoted in this opinion, the Court declared: "The rule is established beyond controversy. It was so held by the Supreme Court of New York in Troup *vs.* Smith, 20 Johns. 33, and again in Callis *vs.* Waddy, by the Court of Appeals of Virginia, and also in Hamilton *vs.* Smith, by the Supreme Court of North Carolina, and in Cocke and Jack *vs.* McGinnis, in the Supreme Court of Tennessee. Nor are we aware that at this time the reverse is held in any State in this Union. It is the doctrine maintained in Stowell *vs.* Gouch, found in Plowden's reports, 353, and not departed from by the English Courts, even in cases of civil war, when the Courts of justice

were closed, and no suit could be broght. As the act of limitation has no exception that the plaintiff can set up, and as none can be implied by the Courts of justice, * * * it is our duty to affirm the judgment." 9 How., 250.

And Mr. Marcadé, commenting on article 2251 of the Napoleon Code, corresponding with article 3487 of our Civil Code, alludes to the great confusion and uncertainty which anciently existed in France on the subject of the suspension of prescription, in consequence of the application, by judges and authors, of the rule "*contra non valentem*;" and he remarks:

"The Code has applied a remedy to this condition of things and provided against all danger of this kind in the future, by declaring formally, in our article 2251, that prescription runs against every one who cannot bring himself within an exception established by the law. So that henceforth the law will be the sole guide to follow; considerations of equity which might have influenced one mind to-day and another to-morrow will no longer avail, and whenever the question is raised whether such and such a case, by reason of its gravity, ought not to operate as a bar to prescription, all that need be done to furnish an answer will be to ascertain whether or not such case is embraced in any one of the exceptions established by the Code."

And he concurs with M. Duranton and M. Coins Delisle in their views that war, pestilence and other cases of *vis major*, are expressly excluded from the causes which suspend prescription, by the terms of the article. Marcadé, Prescription, p. 150, Rev. &c., Franc et Etrang, 1847, pp. 285, 302; Duranton Nos. 285, 286.

So we think "prescription *runs against all persons*, unless they are included in some exception established by law." Art. 3487 C. C.

The Legislature of this State might have established an exception to meet the contingencies of this case, but they have not; and the plaintiff and those similarly situated may

exclaim, in the language of M. Marcadé, "*Dura lex, mais il faudra toujours ajouter, scripta tamen.*"

If our Code has furnished as a rule, it is imperative, even though it be shown to be defective, and grave and weighty considerations of policy are appealed to in favor of another. The remedy is in the hands of the Legislature (16 La., 394).

This view of the case renders it unnecessary to notice the bill of exceptions taken to the charge of the district judge, and, in other respects, the former opinion rendered in this case meets with our approbation.

It is, therefore, ordered and adjudged that the decree of this court rendered on the 26th of February, 1867, be avoided; that the judgment of the district court be annulled, and that the verdict of the jury be set aside. It is further decreed that there be judgment in favor of the defendants, and that the plaintiff and appellee pay the costs of both courts.

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In the Supreme Court of U. S.

No. 294.

LOUIS F. GENERES,

Plaintiff in Error,

vs.

WALTER L. CAMPBELL.

DEFENDANT'S BRIEF.

J. A. CAMPBELL,
For Defendant.

Murray & Co. Printers and Stationers, 102 Baltimore street, Baltimore.

Supreme Court of the United States.

LOUIS F. GENERES,

vs.

WALTER L. CAMPBELL.

ERROR TO THE CIRCUIT COURT OF THE U. S. LOUISIANA.

The defendant in error, (Campbell,) brought suit as endorsee of a promissory note made by J. L. G., and endorsed by the plaintiff, (Generes,) at New Orleans, 4th April, 1861, and payable at the office of Abat, Generes & Co., in that city, of which the endorser was a partner, two years after its date. It appears the consideration of the note was the price of slaves sold to the maker, a brother of the endorser. The note was not presented at the place of payment at its maturity in April, 1863—nor after until June, 1865.

The civil war in Louisiana, commenced in 1861. In that year the defendant (Campbell) removed to St. Helena parish, which adjoins Mississippi, where he remained until after the termination of the war. In April, 1862, New Orleans was captured by the forces of the United States, and the Island of Orleans, bounded by water, and accessible on the north through bridges at pass Manchac, remained in the military occupation of the United States troops until the conclusion of the war. Thus the defendant (Campbell) was cut off from access to New Orleans.

For the country parishes north of Manchac, including St. Helena, were within the Confederate lines till the conclusion of the war. This place and the approaches to New Orleans, were zealously guarded and communication was prohibited, and such as existed was under military supervision or clandestine and illegal.

Judgment was given for the defendant in error by the Court, a jury having been waived in writing. (R. 18.)

The plaintiff (Generes) filed a bill of exceptions, which was *signed* though not *sealed* (5 Wallace, R. 663,) by the Court, to which objection is now taken. In paragraphs 57, 58, 59, R. 18, the plaintiff reports the argument of his counsel, and concludes "that the Court overruled the pleas of proscription and of want of protest urged by the defendant." The Court does not find the facts, nor does it state upon what facts or arguments the conclusions of the Court were founded. The written testimony is contained in the record and some portions of it—those selected by the counsel of the plaintiff as was most favorable to his argnment—is referred to, but it does not appear that the Court proceeded upon that evidence—or that it accepted the statements of the argument as facts. In paragraph 60, R. 19, a similar report of the argument of the counsel of the plaintiff is made, and the pleas overruled by the Court are stated. See cases, 9 Wallace, S. C. R., 125, as to the manner of making up these cases for Supreme Court.

The counsel for the plaintiff assumed in his argument, that a *protest* of a promissory note and a notice of the protest was necessary to charge an endorser and he specially pleaded that the endorser was not liable "from want of *protest* and notice of protest." (R. 3.) But this is not the law of Louisiana, nor the commercial law. The commercial law requires demand and notice, but not *protest* and *notice* of *protest*, and such is the law of Louisiana.

15 La., 552.

11 Rob., 454.

Burke vs. McKay, 2 How., S. C. R., 66.

16 La., 282.
6 Rob., 276.
6 Louisiana Rep., 730.
5 Ann., 238.

Without waiving objection to the frame of the bill of exceptions, either as not sealed and as containing no statement of facts, nor proper presentation of the questions at issue, we shall proceed to discuss the questions as they are presented by the testimony in the record, assuming it to be all before this Court. The condition of the portion of Louisiana where the defendant (Campbell) resided, is properly shown by the testimony of himself, and of Gayarrè, Bartlett and Marr, (R., p. 5, 12, 16:) It is shown upon the pages of the history of the war. In the Spring of 1863, the seiges of Vicksburg and Port Hudson were going on; the battles in the neighborhood of those places were fought; Grierson's raid through St. Helena and the adjoining parishes, took place. "The approaches to New Orleans on both sides were guarded, and all intercourse prohibited by both sides. It was unsafe for any person to leave St. Helena parish to go to New Orleans. There was peril from the military on both sides."

International law, Acts of Congress, Presidential proclamations, military orders, military guards, on the one side and corresponding orders, regulation, and force on the other, obstructed intercourse and communication. The plaintiff and defendant by the mere fact of their local position had been made alien and hostile to each other. The defendant had no title to demand payment, and the plaintiff no right to make payment. The United States had a potential right to appropriate the debt and had forbidden all intercourse, and all transfers of property from their military lines to the Confederate lines, and the reverse. The cases in which a failure to make a presentment is excused are collected in Story on Pr. Notes, §§ 205, 257, 261, 262. The case cited below arose during this war, and concerns a security

payable in the city of New Orleans, and has a reference to the authorities involved in this question, and a statement of the condition of Louisiana.

House vs. Adams & Co., 48 Penn. R., 261.
2 Duvall, Ky. R., 288, 379.

A corresponding statement of law may be found in the writers on commercial law in France, whose internal convulsions and sufferings from invasion, have occasioned a greater necessity for rules on the subject.

Bravord-Veyrières, du droit com., vol. 3, 426.
Bidárride, Lettr. de change, T. 2, Nos. 489, 490, 738.
2 Pardess, droit c., 307.

The war terminated on the part of the insurgents, about April or May, 1865. Their armed forces surrendered and were disbanded in those months. But communication and intercourse were not at once restored. There were no postal facilities; the railroads, bridges, steam vessels, and stages which had formerly existed were either impaired or destroyed. The country was filled with disbanded soldiers, without money or occupation; the highways were infested by marauders, and the emancipated slaves were thronging the towns, having deserted their homes.

The record contains two military orders from the Commanding General, in New Orleans, that show the date of the removal of the restrictions on commercial intercourse, and the withdrawal of military inquisition.

The order of the 29th May, 1865, shows that the first requirement of the military and police authorities, were that all persons should preserve order, tranquillity, and peace in their neighborhood. There were no magistrates in the land. The second order bears date 7th day of June, 1865—following after the amnesty proclamation of the President of the last of May. The testimony shows that five days after this last order, the defendant was in New Orleans, and called upon the endorser for payment of the note at his office.

He came fifty miles by land, and the remainder of the journey on a railroad, in a ruinous condition. He says: "I went to the city as soon as I heard restrictions upon intercourse and business had been removed, and that I would be in no danger of military interference." He was among the first that returned to the city. His answers: (4th, 5th, 6th, R., p. 5,) the answer of the defendant (R. 10,) show that a demand of payment was made; that payment at that time was refused; that no money had been deposited for the payment of the note by the maker, and that the maker had not communicated with the endorser respecting the note during the war. The defendant testifies that the plaintiff held out an expectation that he would pay the note, and this the defendant denies.

Upon this testimony, the Judge of the Circuit Court determined that the facts in proof showed a demand had been made in a reasonable time after the war had ended, and that the endorser had notice of the non-payment of the note.

The precise conclusions of the Court upon the testimony, have not been exhibited in the bill of exceptions, but there is testimony in the record which shows that the requirements of law were complied with, and that the Court might well have found that the requisites of a presentment and notice had been duly proved after the impediments to intercourse had ceased. The plea of prescription is supported by the fact that there was five years and seven months for the maturity of the note until the suit was brought. The prescription is five years.

The answer of the defendant is that there were two years and upwards, when he was not in a condition to bring a suit, and was prohibited from appearing in the Courts, and that the plaintiff recognized the debt after the war was ended, and before the prescription had run. The city of New Orleans, after April, 1862, was subject to a military government until near the end of 1864, and by "invasion, insurrection and rebellion, the peaceable courts of justice were disturbed and stopped, and the courts of justice, as it were, shut up, *et silent leges inter armar.*" This

condition of New Orleans, answers to Lord Coke's description of a time of war.

Co. Litt., 249, b.

Does the principle of the opinion in Hanger vs. Abbott, 6 W. 532, and the Act of Congress of 11th June, 1864. 13 St., p. 123, ch. 118, apply to parties situated as the parties to this suit are? When the note was made, Louisiana was in a state of insurrection. Secession had taken place, and the authorities of the United States had been ejected as is fully described in the case from the *Pennsylvania report* above cited.

By the capture of New Orleans, in 1862, these parties were separated by the military lines of the opposing armies, and so continued until re-united in 1865. The principle contained in the decision above cited, not only applies between nations—and the citizens and subjects of independent nations who have been engaged in war—but it is a rule of municipal law, and operates between citizens of the same State. It is a rule of right suitable in all cases and conditions. It is recognized as a rule of municipal jurisprudence in the Act of Congress above cited.

The insurrection so called was of a magnitude, and a duration that disturbed interests and relations in every part of the U. S. not only within the bounds of the States described as in insurrection and the other States, but between individuals in those States and elsewhere. The relations of debtor and creditor in the Confederate States were suspended, for the Courts were generally closed by the condition of the country. The case of Hanger vs. Abbott is sustained by Merlin, in his Repertoire, (vol. 17, p. 427, 8, 9,) and 2 Troplong de Pres. (No. 727, 728,) as the ancient and unquestioned law of France. In the Code, Napoleon, there is an article (2251) to the effect, that there shall be no exception to the rule of prescription except those specifically stated in the Code, and there is no exception growing out of war stated. Some of the great jurists of France hold that this does not embrace the case of war. Marcade combats this

doctrine, and in his commentary upon the title on prescription, and the article 2261, holds that the prescription runs notwithstanding the war controverting the doctrines of the Courts and of the commentators. But he says that prescription ought not to run, and that special and transitory laws may be adapted suitable to the case. He mentions edicts made during the wars of the League, and the wars in La Vendèe, to meet the exigency, and Troplong mentions other edicts of the same pent in the articles cited from his work. The Court of Cassation in the case of Villas vs. Ducuron, reported in a note to Dalloz, determined that a person having a claim against a resident in France, and who was resident in the Isle of France, on the Indian Ocean, was protected from prescription from 1791 till 1815, because of the obstructions to intercourse opposed by the maritime war that existed during that period.

Dalloz jurisprudence generale to 36, tit. Prescription, No. 791–2, note. The general principle of Hanger vs. Abbott, was unquestionably the ancient law of France and of Europe. If there be a local statute of limitations or a law of prsecription that disavows or repudiates that general principle, the Act of Congress, of the 11th June, 1864, removes its operation. The special and transitory law that Marcade says, was needful to counteract such provisions, was made by that act while the war was pending. The act applies to two classes of cases, that when the bar arose during the war and before the act, and that in which it did not then exist, but might occur. The act of limitations is removed, where service could not be made of process, and where the Courts were closed. In this case, process could not be served, nor even the Courts open between the parties. We refer to the cases to prove that the principle at the foundation of the discussion is, the obstruction to justice by reason of war. For the reason that parties could not meet on equal terms in the tribunals was the exception made.

It is rarely in the history of the world, that *justice* has been declared to be a thing for a monopoly. That some parties may

come into Court for justice and others denied a place. Some laws undoubtedly exist where to some parties Courts are not open. But it is supposed that such cases are exceptional, and that the moral sense of mankind requires they should not be multiplied.

The Act of Congress of 1864, is an affirmation of the principle contained in Hanger vs. Abbott, but in addition to this it removes from the way all contradictory State laws. The Congress was dealing with a special case, and with all the facts before them—a country bound in the closest union was at civil war. The male population for the most part in one section were in arms. Expeditions were being constantly made. Intercourse was obstructed by armies, by legislation, by perils of the land and the sea. Courts were only nominally open. The act declares that a plaintiff who could not sue because the Courts were not open, or because process could not be served, should not be affected for that period by the act of limitations. We readily admit that Congress had principally in view the protection of Northern creditors, and the enforcement of punitive laws of the United States, if it be desired, but no such thing is broadly or with any distinctness, stated. We may grant that Congress did not have much consideration about what would happen to the inhabitants of the insurrectionary States. But it is a very narrow view to take of this statute. It contains a provision proper in itself. It affirms a great principle of public law, and the Congress should have provided *justice* for all under its jurisdiction, and to provide redress for all, and this we think the act does. It provides for the cases where the parties could not freely litigate, because of an unforseen condition of public affairs which prevented them.

The case so strongly put by Troplong, of the injustice that a creditor living at Nancy, would suffer if his debtor, in Metz, could plead prescription in the case when Metz was beseiged, and the creditor Nancy could not reach him, is the parallel of the case in the record.

The last question arises on the consideration of the note and endorsement. The note was given for slaves in *April*, 1861. The law of slavery had existed in Louisiana from its colonial settlement, and slaves were objects of sale by its civil code, c. c. 2442. The contract was *legal* at the time, and illegality cannot, by any *ex post facto* legislation or decision, be made. This, in 1861, was the law of interpretation of the Code. C. c. Arts. 1940, 1895, and so is the law of sale. C. c. 2442, 2478. The abolition of slavery, or of the principle of the law of slavery will not affect contracts for slaves made before. There is a late case in Great Britain, to the point.

Santos vs. Illedge, 8 C. B. Rep., N. S., 862.

An Englishman who purchased slaves in Brazil, was forced to pay the price by the Courts of England. Louisiana could not impair the obligation of the contract of 1861, directly—nor consequentially by legislation or decision.

Mitzelholger vs. Fullerton, 6 Q. B. R., 989.
Madrage vs. Willis, 3 Bar. & Ald., 353.
Buren vs. Denmon, 2d Ex., 167.

Slavery was a lawful, though exorbitant and transitory state, in 1861. If the parties apprehended interference from legislation or law, they should have provided for it by specific warranties meeting the exact case. Even a general and ordinary warranty do not apply to acts *ex post facto* of the sovereign power. The warranty applies only to pre-existing facts and liabilities. But it does not appear here that there was a warranty at all.

The cases in the Courts of the U. S., are to the same purpose as the English cases.

Groves vs. Slaughter, 15 P., 449.
Lane vs. Wick, 5 H., 134.
St. Louis, 2 Dod. Ad., 210.

These cases show that slaves are *legally* in the States where slavery was recognized, and that the Courts of the United States

will enforce contracts made for the sale of slaves in States where slavery exists by law, and the Courts of Great Britain will grant redress for loss to such property under similar conditions. The rights of the parties must be decided by the law of Louisiana, in 1861, and not by the law of 1868.

This principle is at the foundation of a large class of cases determined by the Supreme Court of the United States.

The law of the place of making the contract, and at the time it was made enters into and forms a part of the contract, and an injurious alteration of those laws impairs its obligation.

Ogden & Saunders, 12 W., S. C. R.

Bronson vs. Kinsie, 1 How., S. C. R.

J. A. CAMPBELL,

For Defendant.